

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

LUIS HERNANDEZ and CINDY  
CALDERON,

Plaintiffs,

v.

THE CITY OF SAN JOSE; THE SAN JOSE  
POLICE DEPARTMENT ("SJPD"); ERNIE  
ALCANTAR, individually and in his official  
capacity as Captain, SJPD; and JAMES  
WERKEMA, individually and in his official  
capacity as Lieutenant, SJPD,

Defendants.

Case No. [5:12-cv-02952-HRL](#)

**ORDER RE DEFENDANTS' MOTIONS  
IN LIMINE**

Re: Dkt. No. 62

For the reasons discussed at the June 21, 2016 Final Pretrial Conference, the court rules on defendants' motions in limine as follows:

Motion in Limine No. 1 to "Preclude any Evidence of Defendants Ernie Alcantar and James Werkema's Financial Condition" is GRANTED AS UNOPPOSED.

Motion in Limine No. 2 to "Preclude Plaintiffs from Presenting Evidence Regarding any Time-Barred Claims as the Basis for any Liability" is GRANTED; however, plaintiffs may use pre-limitation period events as background evidence in support of their timely claims. Nat'l R.R. Passenger Corp. v. Morgan, 122 S. Ct. 2061, 2072 (2002); RK Ventures, Inc. v. City of Seattle, 307 F.3d 1045, 1062 (9th Cir. 2002).

1           Motion in Limine No. 3 to “Preclude Plaintiffs from Presenting any Evidence or Argument  
2 Regarding a Claim that Cindy Calderon was Retaliated Against for Exercising her Right to Free  
3 Speech” is GRANTED. Calderon essentially makes a de facto request to amend the complaint to  
4 add a new basis for relief---i.e., exactly the same as the one alleged for Hernandez, her co-plaintiff  
5 and friend. It is inconceivable that Calderon’s free speech claim would be overlooked by the  
6 attorney drafting the complaint. The only plausible conclusion is that she did not have such a  
7 claim. Moreover, this court is told that in deposition,<sup>1</sup> Calderon testified that her only grievance  
8 was based on the alleged violation of her right to free association:

9           Q:     So the only reason that you believe that you were being retaliated  
10           against in 2008 is because you were friends with Officer Hernandez?

11           A:     Yes. And also the structure of their whole testing. There would be  
12           no way for me to check what my answers were against what they claim the  
13           answers were.

14           To allow amendment now would open the door for Calderon to testify at trial contrary to what she  
15           testified to in deposition. That will not be countenanced by the court.

16           Motion in Limine No. 4 to “Exclude the Testimony of Plaintiff’s Proposed Expert Jennifer  
17 Ziegler” is GRANTED IN PART AND DENIED IN PART. Ziegler may not offer legal  
18 conclusions, speculative or argumentative opinions, or make fact determinations that properly  
19 belong to the jury. She may not opine on damages based on time-barred events. However, Ziegler  
20 may be permitted to opine in response to appropriate hypothetical questions based on facts  
21 supported by the evidence. Fed. R. Evid. 403, 702, 703.

22           Motion in Limine No. 5 to “Exclude any Evidence or Witnesses Not Produced or Revealed  
23 in Response to Discovery Requests” is GRANTED AS UNOPPOSED. It goes without saying that  
24  
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27

28           <sup>1</sup> The quoted portions of Calderon’s deposition testimony were read to the court on the record at  
the pretrial conference.

neither side will be permitted to present such evidence. Fed. R. Civ. P. 37(c).

SO ORDERED.

Dated: June 24, 2016



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HOWARD R. LLOYD  
United States Magistrate Judge

United States District Court  
Northern District of California

5:12-cv-02952-HRL Notice has been electronically mailed to:

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United States District Court  
Northern District of California